IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 13 OF 2006

Shri Vishal Fati Dessai,
Son of Fati Dessai,
Major in age, married,
Occupation Business,
resident of Chawdi
Canacona, Taluka Canacona. ... Applicant

versus

1. Mr. Nami Nakano Gaonkar,
   Resident of House No.310,
   Gulem - Canacona.

2. State
   Through Public Prosecutor,
   Panaji Goa. ... Respondents

Mr. V. A. Lawande, Advocate for the Applicant.

Ms. Sudha C. Pai Kir, Advocate for the Respondent No.1.

Ms. W. Coutinho, Public Prosecutor for the Respondent No.2.

CORAM : N. A. BRITTO, J.

DATE : 5TH JULY, 2006.

ORAL ORDER

Heard Mr. V. A. Lawande, the learned Counsel on behalf of the applicant/accused and Ms. Sudha C. Pai Kir, the learned Counsel on behalf of the respondent no.1/complainant.

2. The applicant/accused was convicted and sentenced under Section 138 of the Negotiable Instruments Act, 1881(Act, for short) in a case filed by the complainant, the subject matter of which was 5 cheques, all in the sum of Rs. 1,96,000/-. The learned J.M.F.C. by Judgment/Order dated 11-7-2005 convicted the accused under Section 138 of the said Act and ordered to pay compensation in the sum of Rs.2,10,000/- to the complainant and in default ordered that the accused should undergo imprisonment for a period of 2 months. An appeal having been filed by the said accused, the Judgment of the trial Court came to be affirmed by the appellate Court by its Judgment dated 4-4-2006. When this revision came up for hearing on 13-4-2006 before this Court, this Court had suspended the execution of the sentence imposed by the learned J.M.F.C. in C.C.No.82/N/2004 with a condition that the accused deposits a sum of

Rs.1,00,000/- before the learned J.M.F.C., Canacona within a period of 3 weeks and the accused was directed to be released on bail upon execution of a bond of Rs.15,000/- with one surety in the like amount to the satisfaction of the learned J.M.F.C., Canacona. It was also stipulated that in the event the accused fails to deposit the said sum of Rs.1,00,000/-, the bail granted to the accused would automatically stand cancelled. It has been submitted by learned Counsel Ms. Pai Kir on behalf of the complainant that the accused failed to comply with the said condition of the Order of this Court dated 13-4-2006 and the accused has absconded.

3. I have heard the learned Counsel on behalf of both the parties in this criminal revision application. The case of the complainant was that the said 5 cheques were issued by the accused towards the purchase of cashew nuts from the complainant. The accused had taken a stand that the said 5 cheques were issued by the accused as security towards the supply of cashew nuts to be made by the complainant to the accused and in support thereof the accused had also examined himself as well as another witness. Both the Courts below, on

the analysis of evidence produced by the accused has disbelieved the story set up by the accused as well as by his witness and have come to the conclusion that the said cheques were issued by the accused towards the liability of the accused towards the complainant on account of purchase of the cashew nuts by the accused from the complainant. Both the Courts below have also come to the conclusion that the other requirements of Section 138 of the Act were duly met by the complainant. In the light of the concurrent findings given by both the Courts below, in my view, there is no case for interference in this revisional jurisdiction. As a result, the revision filed by the accused fails and is hereby dismissed. Criminal Miscellaneous Application No.206 of 2006 shall also stand disposed of.

N. A. BRITTO, J.

RD.